

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

STEPHEN MICHAEL MOBLEY,	:	
	:	
Petitioner,	:	Case No. 3:08cv285
	:	Case No. 3:02cr005
vs.	:	
	:	
UNITED STATES OF AMERICA,	:	District Judge Timothy S. Black
	:	Magistrate Judge Sharon L. Ovington
Respondent.	:	

REPORT and RECOMMENDATIONS¹

This matter is before the Court on *pro se* Petitioner Stephen Michael Mobley's amended motion pursuant to 28 U.S.C. § 2255 to vacate, set aside or correct sentence (Case No. 3:02cr005, Doc. #214).²

On June 16, 2010, District Judge Timothy S. Black issued a Decision and Entry adopting a previously filed Report and Recommendation which recommended that Mobley's § 2255 motion be denied in part and that an evidentiary hearing be held as to the remaining claims. (Doc. # 231). Thereafter, the Court appointed counsel to represent Mobley and scheduled the matter for an evidentiary hearing. After conferring with his client, and discussing the possible ramifications with proceeding with his § 2255 motion,

¹Attached hereto is NOTICE to the parties regarding objections to this Report and Recommendations.

²Although not expressly stated, all further docket references will be to the docket number assigned in the criminal case.

counsel for Mobley requested a hearing regarding the issues presented. On August 13, 2010, the undersigned conducted a hearing and thereafter Mobley requested additional time to consider all the options. The Court rescheduled the hearing for September 9, 2010. On that date, Mobley appeared before the Court and with counsel. At that time, Mobley moved to dismiss his pending § 2255 motion. The Court inquired if there had been any threats or promises to get him to dismiss his motion and Mobley indicated that there were none. Being satisfied that Mobley was under no coercion or duress, the undersigned recommends that Mobley's Amended Motion to Vacate be dismissed with prejudice.

IT THEREFORE IS RECOMMENDED THAT:

- 1) Petitioner Stephen Michael Mobley's amended motion to vacate, set aside or correct sentence (Case No. 3:02cr005, Doc. #214) be DISMISSED with prejudice; and,
- 2) The case be terminated on the record of this Court.

September 9, 2010

s/Sharon L. Ovington
Sharon L. Ovington
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen (14) days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(d), this period is extended to seventeen (17) days because this Report is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(B), (C), (D), (E), or (F). Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within fourteen (14) days after being served with a copy thereof.

Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).